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12                   **UNITED STATES DISTRICT COURT**  
13                   **NORTHERN DISTRICT OF CALIFORNIA**  
14                   **SAN FRANCISCO DIVISION**

15                   **IN RE CAPACITORS ANTITRUST**  
16                   **LITIGATION**

17 All Direct Purchaser Actions,  
18 Case No. 3:14-cv-03264-JD

19  
20                   **DEFENDANT NCC'S REPLY ISO**  
21                   **MOTION TO (I) ALLOW UCHIYAMA**  
22                   **TO TESTIFY SUBSTANTIALLY AND**  
23                   **(II) PRECLUDE EVIDENCE OF HIS**  
24                   **PRIOR INVOCATION OF FIFTH**  
25                   **AMENDMENT RIGHTS**

26 Master Docket No.: 3:17-md-2801-JD

27 Date to Be Set by the Court  
Time to Be Set by the Court  
Courtroom 11  
Hon. James Donato

28 Case No.: 3:14-cv-3264-JD

1       Plaintiffs' opposition to NCC's motion fails to address the substantive arguments made  
2 by NCC. To be clear, NCC is not seeking to affirmatively present Mr. Uchiyama's testimony.  
3 NCC's point is simply that Plaintiffs cannot subpoena Mr. Uchiyama and then, upon learning  
4 that he would be willing to come testify substantively in response to Plaintiffs' questions, change  
5 their minds and simply use his prior Fifth Amendment invocations instead. That type of  
6 gamesmanship should not be permitted. Plaintiffs fail to address this argument completely and  
7 for that reason alone, NCC's motion should be granted.

8       As to DPPs' argument that this motion comes too late, the timeline is one of DPPs'  
9 creation. On January 17, 2020, DPPs first served the trial subpoena. On January 25, 2020, DPPs  
10 purported to withdraw it. Since then, the parties have been meeting and conferring about the  
11 issue and have been exchanging deposition designations and objections to the same. Now that  
12 the deposition designation process is complete and DPPs have made abundantly clear that they  
13 intend to play Mr. Uchiyama's Fifth Amendment invocations rather than calling him to testify  
14 live (as they said they intended to do just last month), NCC filed this motion.

15       For these reasons, and those set forth in the motion, NCC respectfully requests that the  
16 Court order that DPPs must either call Mr. Uchiyama live to testify substantively at trial, or  
17 forego use of his Fifth Amendment deposition.

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NCC'S REPLY ISO MOT. ALLOW SUBSTANTIVE TEST. FROM UCHIYAMA  
& PRECLUDE EVID. OF HIS PRIOR 5TH AMEND. INVOCATION

Case Nos. 3:14-CV-3264-JD; 3:17-MD-2801-JD - 1

1 Dated: February 25, 2020  
2

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP

3 By: /s/ Joseph J. Bial  
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